

Mr. LEMIEUX. I again call for the fact that every skimmer in the world that is available should be welcomed by this government. They should be steaming toward the Gulf of Mexico, and we should be doing everything we can to make sure we are cleaning up this oil before it gets on our beaches, before it gets into our estuaries and our coastal waterways. It is beyond belief we are not doing more. It is beyond belief this administration has no sense of urgency about stopping the oil from coming ashore.

I ask, Mr. President—and I will continue to come every day to the floor to ask the question—where are the skimmers? Where is the help? Where are the domestic skimmers? Why aren't we doing the job we should for the American people to protect our beaches, our waterways, and our estuaries?

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I see our distinguished colleague from Pennsylvania on the Senate floor, and I know he expects to speak for a little more extended time. He has graciously allowed me to go first.

#### NOMINATION OF ELENA KAGAN

Mr. CORNYN. Mr. President, I rise to speak briefly on the nomination of Elena Kagan to the U.S. Supreme Court. Of course, this vacancy is being left by the retirement of Justice John Paul Stevens.

The President has the constitutional prerogative to nominate whosoever he chooses, but it is important to recognize the Constitution does not stop there. It also provides a second constitutional obligation or responsibility, in this case upon the Senate, when it comes to the duty of advice and consent.

We know there are only nine Justices on the U.S. Supreme Court and that each has that job for life. It goes without saying—or it should, I would add—that the process in the Senate must be fair and dignified. I wish I could tell you it has always been that way, but I believe the confirmation process of Judge Sotomayor to the U.S. Supreme Court was conducted in that way, and I certainly believe so will this confirmation process as well. But in addition to being fair and dignified, it must also be careful, thorough, and comprehensive.

Our job is particularly difficult because of the fact that Solicitor General Kagan has never been a judge. She is a blank slate in that regard. We do not have any prior opinions to study. While that is not unprecedented, it is somewhat unusual for someone to come to the U.S. Supreme Court without ever having served as a judge. In addition, we know General Kagan has practiced law only very briefly. She was an entry level lawyer in a Washington law firm for about 2 years and then, of course, last year she was chosen by the President to be Solicitor General at the Jus-

tice Department. But that brief experience tells us virtually nothing about how she would approach cases as a member of the U.S. Supreme Court.

What we do know about Elena Kagan begins, and largely ends, with her resume. We know the jobs she has held. We know the positions she has occupied and the employers she has chosen to work for. A review of her resume shows us two things. First, Ms. Kagan is very smart. Her academic records are impressive. Second, we know Ms. Kagan has been a political strategist for a quarter of a century, but she has never been a judge. We know she has served extensively and repeatedly as a political operative, adviser, and a policymaker—quite a different job than that she would assume should she be confirmed.

We know General Kagan's political causes date back to at least college, when she volunteered to help a Senate candidate in her native State of New York.

We know that after law school, she worked for two of the most activist Federal judges in the 20th century, Abner Mikva and Thurgood Marshall. Justice Marshall often described his judicial philosophy as “do what you think is right.” I wish he had mentioned something about applying the law, but he said to do whatever you think is right. Elena Kagan has called Justice Marshall her judicial hero.

We know that Solicitor General Kagan volunteered for a time in the Michael Dukakis campaign for President in 1988, where she did opposition research.

We know that a few years later, Ms. Kagan advised then-Senator JOE BIDEN during the nomination of Ruth Bader Ginsburg.

We know General Kagan gave up her teaching job to work at the Clinton White House where she was a leading policy adviser on many of the hot button issues of the day. She was a deputy assistant to the President on domestic policy. She was a deputy director of the Domestic Policy Council. During that time, she was a leading policy adviser on a number of controversial issues regarding abortion, gun rights, and affirmative action.

After she left the Clinton White House, Ms. Kagan's political skills helped her become dean of the Harvard Law School and, by all accounts, she was successful in that job as an administrator and as a fundraiser. The one clear legal position she took as dean was her position against military recruiters that the Supreme Court rejected 9 to 0.

Solicitor General Kagan returned to government a year ago when she became Solicitor General following the election of her friend Barack Obama.

Ms. Kagan's resume shows that she is very comfortable in the world of politics and political campaigns. She has worked hard as a policy and political strategist in some very intense political environments. As a policy and po-

litical adviser, her record indicates she has been successful.

The question raised by this nomination, though, is whether Elena Kagan can step outside of her past role as political adviser and policy strategist in order to become a Federal judge. I have had the honor of being a State court judge and I know firsthand that being a judge is much different from being a political strategist. The job of a political strategist is to help enact policies. The job of a judge is to apply the law wherever it takes them.

The goal of a political adviser is to try to win for your team. On the other hand, a good judge doesn't root for or fight for a team but, rather, is impartial or, as sometimes stated, is disinterested in results, in winners and in losers.

The important question is whether Solicitor General Kagan can and will set aside her considerable skills as a political adviser to take on a very different job as a neutral judge. Will she apply the law fairly, regardless of the politics involved? Will Solicitor General Kagan appreciate the traditionally narrow role of a judge who must apply the law rather than the activist role of a judge who thinks it is proper to make up the law? Can she make the transition from political strategist to judge?

The hearings on Ms. Kagan's nomination are 1 week from today. I hope the hearings will be a substantive and meaningful opportunity for Elena Kagan to explain how she plans to make that shift from political strategist to judge. Because she has never been a judge, the hearings will be a chance to learn about what she expects her judicial philosophy and approach will be.

Every candidate for the Supreme Court has the burden of proof to show they are qualified to serve on the Supreme Court. Most nominees have a much longer record, including a record of judicial service, which could help satisfy that burden of proof, but not so in Ms. Kagan's case. Given Ms. Kagan's sparse record, however, the hearings themselves must be particularly substantive.

In 1995, then-Professor Kagan gave advice in a Law Review article to the U.S. Senate on how to scrutinize a Supreme Court nominee. She wrote that the “critical inquiry” must be “the perspective [the nominee] would add” and “the direction in which she would move the institution.”

I agree. Given Solicitor General Kagan's sparse record and her lack of judicial experience, it is important that the hearings be an opportunity to fill in the blank slate that is Elena Kagan.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

#### SEPARATION OF POWERS

Mr. SPECTER. Mr. President, I have sought recognition to again alert my